

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

* * * * *
THE ESTATE OF YARON UNGAR, ET AL., Case No:

Plaintiffs 00-105L

vs.

THE PALESTINIAN AUTHORITY;
ET AL.,

Defendants

* * * * *

VIDEOTAPED RULE 30 DEPOSITION OF:
SALAM FAYYAD
EAST JERUSALEM
JULY 28, 2010

Videotaped Rule 30 deposition of SALAM FAYYAD, taken in the above-entitled cause pending in the United States District Court, District of Rhode Island, pursuant to notice, before ISABELLE KLEBANOW, RPR, CT No. 311, Stenographer, at the Ambassador Hotel, East Jerusalem, on Wednesday, the 28th day of July, 2010, at 4:15 p.m. Jerusalem time.

REPORTED BY: ISABELLE KLEBANOW, RPR, CT NO. 311

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Osama Saadi
George Salem

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PROCEEDINGS

THE COURT REPORTER: This is the videotape deposition of Salam Fayyad taken by the Plaintiffs in the matter of Ungar, et al. versus the Palestinian Authority, et al., US District Court, District of Rhode Island, Case No. 00-1056, held at the Ambassador Hotel in East Jerusalem on July 27, 2010, at 4:00 p.m.

The court reporter is Isabelle Klebanow,
Post Office box 29077, East Talpiot, Jerusalem 91290.

The videotape specialist is Mark Coopersmith.

And counsel will now state their appearance.

MR. ROCHON: Thank you. On behalf of the Palestinian Authority and the PLO, you have Mark Rochon, Laura Ferguson, Andrew Wise. Also here are George Salem and Osama Saadi, who are counsel for the Prime Minister.

MR. WISTOW: Max Wistow for the Plaintiffs.

MR. STRACHMAN: David Strachman for the Plaintiffs.

MS. LASHNER-LEITNER: Nitsana Lashner-Leitner.

THE COURT REPORTER: Okay. I need to --

MR. WISTOW: -- swear the witness.

THE COURT REPORTER: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

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MR. FAYYAD: I do.

THE COURT REPORTER: Thank you very much.
DIRECT EXAMINATION BY MR. WISTOW:

Q. Firstly, I wanted to ask you, how should I address you? Is it all right if I call you Mr. Fayyad?

A. That's fine. Yes.

Q. I understand that, at the present time, you are overseeing the American cases involving victims under the American Anti-Terrorism Act on behalf of the PLO and the PA, is that true?

A. As part of my over-all responsibility as Prime Minister and Minister of Finance.

Q. I'm not suggesting that's your sole duty. But that is part of your duties, is it not?

A. Part of what I do, yes.

Q. And you've tried to familiarize yourself with the Ungar case, have you not?

A. Yes.

Q. And do you understand where the Ungar case sits at the present time in the Federal Court? What its status is?

A. Yes, I do.

Q. Would you tell me what your understanding is.

A. My understanding is that I am being deposed here in connection with our attempt to have the case

1 that fair?

2 MR. ROCHON: Objection. Asked and answered.

3 MR. WISTOW: That's one of the things you're
4 not supposed to do under our local rules. You just
5 object, okay? Or instruct him not to answer, if you
6 wish.

7 MR. ROCHON: Thank you for the suggestions.

8 Q. Is it fair to say that, as you sit here now,
9 under oath, you have no present recollection of learning
10 of this order?

11 It may be you've forgotten it -- you knew it and
12 forgot it -- but you have no recollection? Is that
13 fair?

14 A. That's exactly what I meant when I said I don't
15 remember really.

16 Q. Okay. So, as we sit here today, you have no
17 recollection of ever learning of the order?

18 MR. ROCHON: Objection.

19 Q. Is that fair?

20 MR. ROCHON: Objection.

21 MR. WISTOW: I'm entitled to get a straight
22 answer.

23 MR. ROCHON: Objection.

24 A. I just gave you one.

25 Q. Is it fair --

1 document before?

2 (Witness peruses document.)

3 A. I don't know if I remember seeing this document
4 specifically. I mean this very document.

5 Q. Okay. I would like to direct your attention --

6 A. Yes.

7 Q. -- to eight lines from the bottom of the first
8 page where it starts to read, The United States
9 respectfully informs the Court that it declines to file
10 a Statement of Interest concerning the Rule 60 issues
11 presented by this case, but will continue to monitor
12 this and other cases like it.

13 MR. ROCHON: (Indicating).

14 MR. WISTOW: Did you just point something to
15 him?

16 MR. ROCHON: Yes. The sentence we're
17 reading so he could find it on the page. He was asking
18 for help.

19 MR. WISTOW: Okay.

20 Q. If you need assistance in finding something, I'd
21 ask you to tell me that you can't find it.

22 A. Fine.

23 Q. Is that fair?

24 A. Fair.

25 Q. Okay. Have you located it?

1 A. If what you said means I don't remember, then
2 that's what I really mean to say.

3 Q. Okay. Now, did you ever learn whether or not the
4 United States complied with Judge Marrero's order?

5 A. I don't remember either.

6 Q. Maybe I can refresh your recollection.

7 A. Okay.

8 MR. ROCHON: If we show the witness the one
9 that gets marked, we'll have two on our side --

10 MR. WISTOW: Okay. Sure.

11 MR. ROCHON: -- if that's agreeable.

12 MR. WISTOW: That's fine.

13 MR. ROCHON: If that's okay with the court
14 reporter.

15 (Off-the-record discussion while exhibit is
16 marked).

17 (Exhibit No. 2 marked for identification.)

18 Q. Now, do you know --

19 MR. ROCHON: That's how this -- by doing it
20 that way, then we do get the two copies, so he's got
21 one. We've got two.

22 The court reporter doesn't read them. She
23 marks them.

24 MR. WISTOW: That's fine.

25 Q. Have you ever, to your recollection, seen this

1 A. I have.

2 Q. Okay. Have I read it correctly?

3 A. You have.

4 Q. Okay. Do you understand that to mean that, in
5 response to Judge Marrero's order to the United States
6 to state whether or not it would file a Statement of
7 Interest, the United States responded by saying they
8 would not file a Statement of Interest in this case --
9 the Knox case -- or any similar cases.

10 Do you understand that to mean that?

11 A. I understood that to be the case. I'd have to
12 read through the rest of the letter, or to continue that
13 sentence where it says, But will continue to monitor
14 this and other cases like it.

15 Q. Yes. Right. I'm only talking about at the time.

16 A. Yes.

17 Q. I mean anything could happen after this.

18 A. I understand.

19 Q. But at that time --

20 A. Yes.

21 Q. -- which was February 29, 2008, if this document
22 is authentic, then the United States declined to give a
23 suggestion (sic) of interest in the Knox case -- and you
24 see, third line from the top -- or in any other of the
25 cases pending in other districts.

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1 You see that?

2 A. The third line --

3 (Witness peruses document.)

4 A. I see that, yes.

5 Q. Okay. So did you ever learn from any source that
6 the United States had declined to issue a Statement of
7 Interest in the Knox case or in any of the other cases
8 pending in other districts against the PLO and the PA?

9 MR. ROCHON: Objection.

10 Q. Did you ever learn that from any source?

11 MR. ROCHON: Objection. Don't answer yet.
12 You have to exclude conversations --

13 MR. WISTOW: No. I don't exclude
14 conversations. It's not a privileged communication.
15 It's not confidential information. It's relating --

16 MR. ROCHON: Let me just -- I'm not arguing.

17 MR. WISTOW: I don't want any fighting. I
18 don't exclude anything.

19 MR. ROCHON: We're agreeing. The answer to
20 the question will not be deemed to be a waiver of
21 privilege.

22 MR. WISTOW: That's right. I believe
23 privilege has been waived for other reasons we'll get
24 into. But I stipulate that an answer to this will not
25 represent a waiver.

1 Statement of Interest in a generic sense.

2 And that actually is what's borne out if you read
3 a couple of lines down from where that reference which
4 you just cited, where the letter says, At the same time,
5 the United States remains concerned about the potential
6 significant impact of these cases -- significant impact
7 these cases may have on the financial and political
8 viability of the Defendants.

9 Q. Have you finished your answer?

10 A. Yes.

11 MR. WISTOW: I move to strike.

12 THE COURT REPORTER: Could you identify the
13 person who came in the room.

14 MR. WISTOW: Could you identify yourself for
15 the record, please.

16 MR. HALLER: Mordechai Haller.

17 THE COURT REPORTER: Spell it for me,
18 please.

19 MR. HALLER: M O R D E C H A I, H A L L E R.
20 Plaintiffs' Israeli counsel.

21 Q. Have you finished your answer, Mr. Fayyad?

22 A. Yes.

23 Q. Do you remember the question?

24 A. I remember the question.

25 The question was that -- were you aware that

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1 MR. ROCHON: Mr. Prime Minister, you can
2 answer the question.

3 A. Well, I remember that there was a process.

4 And, as I told you myself, I myself communicated
5 on this with the Secretary of State at the time,
6 Condoleezza Rice, seeking help. And I understood what
7 the Statement of Interest meant -- Statement of Interest
8 -- a term mentioned on several occasions in my
9 discussions with US officials.

10 Now -- and I understood, at some point -- whether
11 in connection with this letter or some other
12 communication I can't remember right now -- that the US
13 did not submit, or did not want to submit, a Statement
14 of Interest.

15 But I also recall that it did not mean -- that
16 representation done by the United States, it does not
17 mean that the administration was --

18 (Mr. Haller enters the room.)

19 Q. I'm sorry. I didn't hear the end.

20 A. That it did not mean that the administration was
21 indifferent as to what was going on.

22 In other words, I understood that -- the way I
23 understood it was, in a formal sense of a Statement of
24 Interest, there was not acceptance of it. There was not
25 a submission of it. But, at the same time, there was a

1 there was -- or does this not say that the United States
2 did not want to submit a Statement of Interest.

3 Q. No. I'm not asking you about what the letter
4 says.

5 A. Oh, okay.

6 Q. I'm not. I'm asking you if you ever became aware
7 of whether or not the United States responded to Judge
8 Marrero by saying -- let me finish, please --

9 A. Yes.

10 Q. -- by saying they declined to state -- to file a
11 Statement of Interest at that time.

12 Did you ever become aware of that?

13 A. As I indicated, I'm aware that there were
14 discussions, communications, on this matter. I was
15 aware that there was not a straightforward Statement of
16 Interest submitted by the US government to the Court.

17 But I also remember being told that that
18 statement or that communication or those communications
19 where Statement of Interest was not filed did not mean
20 that the administration was indifferent as to the
21 proceedings.

22 That's my answer.

23 Q. Okay. I'm going to press it a little bit.

24 A. Okay.

25 Q. I'm really not asking you to interpret what the

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1 intent of the government was, the American government.

2 I'm asking you only if you were aware that, on
3 February 29, 2008, the United States said to Judge
4 Marrero, and I quote, "The United States respectfully
5 informs the Court that it declines to file a Statement
6 of Interest concerning the Rule 60 issues presented by
7 this case, but will continue to monitor this and other
8 cases like it.

9 Did you ever become aware of that declination?

10 A. What I'm really trying to communicate to you, and
11 through you to the Court, is my understanding of the
12 nature of that communication; and, specifically, that
13 the administration did not file a Statement of Interest
14 in the way a Statement of Interest is technically
15 defined.

16 But I remember, in the context of communications,
17 suggesting that it was not not interested in what was
18 going on. That's basically my recollection of the
19 exercise.

20 Q. Mr. Fayyad, I'm going to ask you to try not to
21 communicate with the Court, as you just suggested you're
22 doing.

23 Try to just answer my questions. The Court will
24 hear my questions, will hear your answers. Under our
25 system, I get to ask questions and, hopefully, you

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1 A. I learned that. But, at the same time, I learned
2 that the United States was not disinterested, and that
3 that view of the United States was communicated as well.

4 Q. Okay. The United States also expressed sympathy
5 for the victims, did it not?

6 A. It did.

7 Q. And it expressed sympathy and interest in the PLO
8 and PA, did it not?

9 A. It did.

10 Q. So it wasn't indifferent to either side, was it?

11 A. No. But that's not what the letter said. It's
12 not indifferent to either side.

13 Q. That's right.

14 A. Yes.

15 Q. But the letter says they declined to file a
16 Statement of Interest.

17 A. That's what the letter said.

18 Q. Right. Did you ever learn of that decision?

19 A. Whether in this specific case or another case, I
20 really cannot tell you right now.

21 But I'm aware of the fact that the United States
22 did not file a Statement of Interest in the way a
23 Statement of Interest is construed to mean in a legal
24 sense.

25 Q. How did you learn that?

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1 answer them.

2 I'm not trying to tell half the story. You have
3 lawyers. They can bring out what they want.

4 Do you understand?

5 A. I respect the system, and I am doing my best to
6 answer your questions, sir.

7 Q. Okay. My question is, did you ever learn that
8 Judge Marrero was informed that the United States
9 declined to file a Statement of Interest.

10 MR. ROCHON: Objection.

11 Q. Can you answer that either yes, no, or I don't
12 remember?

13 MR. ROCHON: Objection.

14 Q. Can you?

15 MR. ROCHON: You can answer the question.

16 A. As I said, you know, I'm aware that there was
17 activity along those lines, but I do not remember each
18 and specific case or specific communication.

19 But the substance of what I recall is what I told
20 you.

21 Q. Okay. Did you learn, in substance --

22 A. Yes.

23 Q. -- that the United States declined to file a
24 Statement of Interest? Did you learn that?

25 MR. ROCHON: Objection. You may answer.

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1 MR. ROCHON: Objection.

2 A. I've had discussions on this with US officials
3 all the time.

4 Q. Really?

5 A. Yes.

6 Q. When was the last time you had a discussion with
7 a US official about this?

8 A. Not the recent period.

9 Q. Well, you said all the time. I'm just asking you
10 when the last time was.

11 A. I'm trying to remember now. All the time when
12 this was being activated and all.

13 Q. Take your time, Mr. Fayyad. There's no rush.

14 A. I can actually give you a precise date if I can
15 remember when it is that I visited the State Department
16 and met with lawyers at the State Department.

17 I'd have to go back to my itinerary, my travel
18 records, and I'd be able to provide you with that.

19 Q. Please understand --

20 A. In other words, it's not -- I know that I did
21 discuss it.

22 Q. Okay. Please understand. I don't expect you to
23 have exact dates.

24 A. Okay.

25 Q. Can you give me an approximate date?

1 A. Yes. That I can.
 2 Q. What is that?
 3 A. Let me -- not necessarily in connection with this
 4 case, but generally, you know, cases filed against us in
 5 the United States.
 6 So I believe it must have been a year ago.
 7 That's when I believe I officially visited the United
 8 States. A year ago.
 9 Again, I can look it up and provide with you the
 10 records.
 11 Q. I'm only asking you for your best recollection.
 12 A. Yes.
 13 Q. And I understand all you can give me, without
 14 checking your records, is your best recollection.
 15 A. My best recollection is that the last time I had
 16 a discussion on cases -- on litigation against us in the
 17 United States in connection with these matters --
 18 general matters. Not necessarily this case -- was a
 19 year ago --
 20 Q. Okay.
 21 A. -- or thereabouts.
 22 Q. Okay. When we say litigation generally and not
 23 necessarily these cases --
 24 A. Yes.
 25 Q. -- we're talking about the so-called terrorist

1 A. Precisely, I do not remember. In connection with
 2 this particular trip, I don't really remember now.
 3 Q. Okay. Would it be fair to say you were asking
 4 them to see if a Statement of Interest could be filed?
 5 MR. ROCHON: Objection. Form and content.
 6 In have a substantive objection on this.
 7 You may want to take it outside the presence
 8 of the witness so you don't think I'm engaging in
 9 speaking objections. But I need to discuss it with you
 10 first before I take it to the judge.
 11 MR. WISTOW: Some kind of diplomatic
 12 privilege?
 13 MR. ROCHON: Yes.
 14 MR. WISTOW: I have a -- it says, This
 15 judgment has already been the subject of diplomatic
 16 communications at the highest levels between our
 17 country's representatives and the State Department.
 18 You've told the Court about this, both the
 19 Circuit Court and the Federal Court. And, you know,
 20 you're flaunting this issue. Now you tell me that I
 21 can't ask him about it? Okay. Just tell him not to
 22 answer. It's okay with me.
 23 MR. ROCHON: Well, we can take it to the
 24 Magistrate Judge. That's why we have him available, so
 25 you can get a ruling on it.

1 claims, correct?
 2 A. Yes.
 3 Q. Claims against the PLO and PA that they were
 4 involved somehow in terrorist activities?
 5 A. Yes.
 6 Q. So you spoke to somebody at the State Department
 7 about a year ago?
 8 A. Yes.
 9 Q. Who was that?
 10 A. I don't -- lawyers.
 11 Q. Can you help me out a little bit?
 12 A. I can't remember the names right now.
 13 Q. Okay. Do you remember their titles?
 14 A. I can't.
 15 Q. Do you remember how many there were?
 16 A. Maybe three, four. I really don't remember.
 17 Q. So did you make -- were you accompanied by
 18 anybody on your side?
 19 A. I really was there by myself.
 20 Q. Okay. And so these three or four lawyers, you
 21 don't remember anybody's name?
 22 A. No. Not right now.
 23 Q. And do you remember if you were -- you had
 24 written to set up an appointment, or how it came to be?
 25 Do you remember?

1 THE VIDEOGRAPHER: Excuse me. I have to
 2 change the tape.
 3 MR. WISTOW: Well, you know what?
 4 MR. ROCHON: We're going to go off the
 5 record.
 6 MR. WISTOW: You know what? I'm perfectly
 7 happy with an instruction not to answer. I don't want
 8 to wait -- I have limited time today. I want to get
 9 this thing moving.
 10 MR. ROCHON: We have to go off the tape.
 11 You can finish, but your tape's running out and you
 12 won't be on the record.
 13 THE VIDEOGRAPHER: Going off the record at
 14 5:18.
 15 (Short recess taken.)
 16 THE VIDEOGRAPHER: Going on record at 5:20.
 17 MR. WISTOW: I'd ask you to reconsider.
 18 You have affirmatively told the Court in
 19 your pleadings that one of the reasons to vacate the
 20 motion -- 60(b)6 motion -- is that -- and I quote from
 21 your pleadings -- "This judgment has already been the
 22 subject of diplomatic communications at the highest
 23 levels between our country's representatives and the
 24 State Department and the governing officials in the
 25 Occupied Territories.

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1 If left intact, the judgment threatens to
2 undermine the relationship between the United States and
3 the Palestinian government, a relationship that the
4 executive branch of the United States government has
5 categorized as being crucial to the Israeli-Palestinian
6 peace process."

7 I don't know how anything could become more
8 relevant, if you're urging that as a reason. So I'm
9 asking him to tell me about all these high-level
10 conversations.

11 MR. ROCHON: The fact of a communication
12 being made known to the Court does not waive any
13 privilege associated with it.

14 MR. WISTOW: I'll tell you what? Why don't
15 we do this? If you could just let him answer this
16 question, if it involved asking for a Statement of
17 Interest, I'll agree that, in and of itself, that answer
18 doesn't waive any kind of privilege.

19 MR. ROCHON: You know, you'll be leading me
20 down the primrose path. I either object or I don't.
21 You mean you'll be done in this area?

22 MR. WISTOW: I don't know. If he says, no,
23 we didn't talk about that, then I certainly --

24 MR. ROCHON: The problem is this. The Prime
25 Minister has a portfolio that includes things other than

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1 this case. So he doesn't communicate only about this
2 case.

3 MR. WISTOW: Oh, Please. I don't want to
4 ask him anything that's not related to this case. That
5 would be inappropriate, and I certainly wouldn't do it.

6 MR. ROCHON: The problem is either -- see, I
7 asked the witness to step out because I don't want you
8 suggest I'm making speaking objections.

9 MR. WISTOW: Why don't you step out.

10 MR. ROCHON: Just escort the Prime Minister
11 out.

12 (The witness leaves the room.)

13 MR. WISTOW: No. I don't want --

14 MR. ROCHON: I'll take the time. I'll eat
15 the time.

16 MR. WISTOW: I know. But we have to keep
17 track of the time.

18 MR. ROCHON: It's all right. We can just
19 note when we start this discussion. I'll eat the whole
20 time.

21 MR. WISTOW: Why don't you do it. Why don't
22 we -- you're the one who's --

23 MR. ROCHON: What time is it now,
24 Mr. Coopersmith?

25 THE VIDEOGRAPHER: The time is 5:22.

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1 MR. ROCHON: Thank you. It's now my time.
2 We're on the record. I'm just eating the
3 time. It doesn't count on the seven hours. Sometimes
4 lawyers try to use up the other guy's time.

5 (The witness leaves the room.)

6 MR. ROCHON: The Prime Minister is out of
7 the room.

8 So, look, when he communicates, it's not
9 like he goes to the State Department only about these
10 cases. He's there about a host of things. He's trying
11 to get money. He's trying to get security. He's trying
12 to --

13 And so none of these things are seen in
14 isolation. So you can't, you know, discuss what did you
15 tell them about this because it's all part of a unified
16 conversation.

17 MR. WISTOW: I didn't even ask him that.
18 All I said to him was, did you ask them if they would
19 file a Statement of Interest in these cases.

20 That's all I asked. That's pretty
21 straightforward.

22 MR. ROCHON: If your question is that, and
23 you're not going to claim it's a waiver of diplomatic
24 privilege --

25 MR. WISTOW: I will not.

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1 MR. ROCHON: As long as we're on my time, do
2 you want to tell me -- he's out of the room. Do you
3 want to tell me where else you're going to go, and we
4 can hash out the diplomatic issues now on my nickel?

5 MR. WISTOW: I'd rather not --

6 MR. ROCHON: All right.

7 MR. WISTOW: -- because I don't know where
8 I'm going, if you haven't figured that out yet. It's a
9 little loosey-goosey.

10 MR. ROCHON: I'm offering it to you because
11 we'll be back on your time soon.

12 MR. WISTOW: I guess, in fairness to you, if
13 he says yes, he did ask them for it, I'm going to ask
14 him did they say yes, did they say no, did they say
15 maybe. That's all.

16 MR. ROCHON: Well, then -- well, I know
17 that's all that you -- that's what implicates diplomatic
18 privilege.

19 MR. WISTOW: I'm just asking a narrow issue.

20 MR. ROCHON: I'm going to have to take this
21 to the Magistrate Judge.

22 I'm not going to instruct him not to answer
23 because you're trying to set me up for some kind of
24 sanctions if I instruct him not to answer. I've got a
25 Magistrate Judge available because we started so late.